

An
Bord
Pleanála

Board Order

ABP-311095-21

Planning and Development Acts 2000 to 2020

Planning Authority: Fingal County Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, in accordance with plans and particulars, lodged with An Bord Pleanála on the 11th day of August 2021 by Rhonellen Developments Limited care of McGill Planning Limited of 45 Herbert Lane, Dublin.

Proposed Development comprises of the following:

1. Demolition of existing buildings including former supermarket building, car park, substation, and outbuildings partially in retail use.
2. Construction of a Build to Rent development comprising three number apartment blocks (Blocks A to C) ranging in height from three to six storeys (with Block B over three number lower courtyard floors) providing a total of 101 number units (19 number studios, 41 number one-beds, 41 number two-beds).
3. Provision of resident support facilities and resident services and amenities (circa 217.03 square metres).
4. Provision of two number retail units (circa 110.15 square metres).
5. Provision of 25 number car parking spaces at ground floor and accessed from Quay Street, 182 number bicycle parking spaces.
6. Provision of Electricity Supply Board substation and switch room, plant areas, fire stores, telecoms areas.

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7. Provision of open spaces, landscaping, boundary treatments, all associated site works, and services provision all located at a site comprising the former (Mall Shopping Centre site, Quay Street and High Street, Balbriggan, County Dublin.

Decision

Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) The location of the site in an established urban area, with the site zoned 'MC-Major Town Centre' within which residential and retail uses are 'acceptable in principle';
- (b) The policies and objectives of the Fingal County Development Plan 2017-2023, as amended by Variation 1, 2 and 3;
- (c) The provisions of Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) The provisions of Housing for All, A New Housing Plan for Ireland issued by the Department of Housing, Local Government and Heritage September 2021;

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- (e) The provisions of Project Ireland 2040 National Planning Framework which identifies the importance of compact growth;
- (f) The provisions of the Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual, A Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (g) The provisions of the Urban Development and Building Heights Guidelines for Planning Authorities, issued by the Department of Housing, Planning and Local Government in December 2018 and particularly Specific Planning Policy Requirement 3;
- (h) The provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020;
- (i) The provisions of the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2019, as amended;
- (k) The provisions of the Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009;
- (l) The provisions of the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- (m) The provisions of the Childcare Facilities, Guidelines for Planning Authorities June 2001 ;
- (n) The nature, scale and design of the proposed development and the existing availability in the area of a wide range of social, transport and water services infrastructure;
- (m) The pattern of existing and permitted development in the area;

(n) The submissions and observations received;

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- (o) The Chief Executive's Report from Fingal County Council;
- (p) The Planning Inspector's Report.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Statement for Screening for Appropriate Assessment submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered the Environmental Impact Assessment Screening Report submitted by the applicant, which contains the information set out in Schedule 7A to the Planning and Development Regulations 2001, as amended, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to -

- (a) The nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended;
- (b) The existing use on the site and pattern of development in the surrounding area;
- (c) The availability of mains water and wastewater services to serve the proposed development;

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- (d) The location of the development outside of any sensitive location specified in Article 299(C)(1)(v) of the Planning and Development Regulations 2001, as amended;
- (e) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003);
- (f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, and
- (g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Environmental Management Plan, the Flood Risk Assessment, the Bat Assessment, the Ecological Impact Assessment, Operational Waste and Recycling Management Plan, the Landscape Strategy and Design Report and the Civil Planning Report;

The Board did not consider that the proposed development would be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development, would be acceptable in terms of pedestrian safety and would provide an acceptable form of residential amenity for future occupants. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

**An amendment to this
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Dated 19/1/2022

Signed: Secretary *Paul Hill*
Chief Officer

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be five years from the date of this Order.

Reason: In the interests of proper planning and sustainable development.

3. The proposed development shall be amended as follows:

(a) The seventh floor of Block B shall be omitted from the proposal and the setback of the sixth floor plan of Block B shall be increased from the north-western (side) elevation of Block B via the omission of the studio unit (Type 03) and the two-bed apartment unit (Type 01A). The remaining quantum of units permitted is, therefore, 77 number units.

(b) The proposed colour renders proposed for Blocks A and B shall be replaced with alternative light coloured brick, the detail of which shall be agreed in writing with the planning authority.

(c) The private amenity areas to the five number units fronting onto High Street at third floor level of Block B which are at street level on High Street shall be omitted from the proposal and the bedrooms of each of the units shall be subsequently increased in floor area.

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- (d) The proposed balustrading and screening proposed for the remaining private amenity areas of Blocks A and B shall be replaced with a design which is more solid in appearance, the final details of which shall be agreed in writing with the planning authority.

Amended plans and particulars detailing the above amendments shall be submitted and agreed in writing with the planning authority prior to the commencement of the development.

Reason: In the interests of protecting the setting of the Architectural Conservation Area, in the interests of visual amenity and in the interests of the amenity of the future occupants of the proposed development.

4. All mitigation and monitoring measures outlined in the plans and particulars, including the Ecological Impact Assessment, Bat Assessment, Construction Environmental Management Plan, the Flood Risk Assessment and subsequent reports submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

5. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the proposed development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first apartments within the scheme.

Reason: In the interests of proper planning and sustainable development of the area.

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In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

8. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. The spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission. Car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties. Car parking serving the entire development site shall be managed based on a detailed car parking management plan. Prior to the commencement of development, such a detailed car parking management plan shall be submitted for agreement in writing with the planning authority.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units.

9. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and or future proof the development such as would facilitate the use of electric vehicles.

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Secretary *Handwritten signature*

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10. Electric charging facilities shall be provided for bicycle parking and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.

Reason: In the interest of orderly development and to provide for and future proof the development as would facilitate the use of electric bicycles.

11. Proposals for the development name and dwelling numbering scheme and associated signage shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. Thereafter, all signs, and dwelling numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements or marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

12. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application unless otherwise agreed in writing with the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

**An amendment to this
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Dated 19/1/2022

Signed: Secretary *Brid Hurl*
Chief Officer

13. The area of communal open space, as shown on the lodged plans shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

Reason: In order to ensure the satisfactory development of the public and communal open space areas, and their continued use for this purpose.

14. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any dwelling.

Reason: In the interests of amenity and public safety.

15. Water supply and the arrangements for the disposal of foul water, shall comply with the requirements of the Irish Water for such works and services.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

16. Prior to commencement of development, the developer shall enter into water and or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

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signed: Secretary

Brid Heil
Chris O'Brien

17. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interests of public health and surface water management.

18. Prior to the commencement of development, a revised Flood Risk Assessment shall be submitted to, and agreed in writing with the planning authority detailing the following amendments:

Details of flood warning, and evacuation measures if necessary, in relation to retail units Numbers 1 and 2 which are shown to be flooded in a culvert blockage scenario and, in relation to retail unit Number 2 which is shown to be flooded in a High End Future Scenario as a result of climate change.

Reason: To minimise flood risk and in the interests of proper planning and sustainable development of the area.

19. A plan containing details for the management of waste and, in particular, recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

**An amendment to this
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Dated 19/1/2022

Signed: Secretary *And Hill*
Chief Officer

20. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

21. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

22. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation including hydrological and geotechnical investigations relating to the proposed development, and
- (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements including, if necessary, archaeological excavation prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation in-situ or by record and protection of any archaeological remains that may exist within the site.

23. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide inter alia: details of proposals as relates to soil importation and exportation to and from the site; details and location of proposed construction compounds, details of intended construction practice for the development, including noise and vibration management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.

Reason: In the interests of public safety and residential amenity.

24. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

25. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

26. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

27. All service cables associated with the proposed development such as electrical, telecommunications and communal television shall be located underground. Any relocation of utility infrastructure shall be agreed with the relevant utility provider. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

28. All items and areas for taking in charge shall be undertaken to a taking in charge standard. Prior to development the applicant shall submit construction details of all items to be taken in charge. No development shall take place until these items have been agreed.

Reason: To comply with the planning authority's taking in charge standards.

29. Prior to the commencement of development, the applicant shall liaise with the Fingal County Council Public Art Coordinator in relation to the provision of a (piece of public art, the location of which shall be agreed with the Planning Authority.

Reason: In the interest of the amenity of the area and in accordance with Objective DMS05 of the Fingal Development Plan 2017-2023, as varied.

30. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation including hydrological and geotechnical investigations relating to the proposed development, and
- (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements including, if necessary, archaeological excavation prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation in-situ or by record and protection of any archaeological remains that may exist within the site.

31. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

32. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond or an insurance company, or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

**An amendment to this
Board Order has been made**

Dated 19/1/2022

Signed: Secretary *Brid Hult*
Chief Officer

33. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions for Fingal County Council of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

DECISION QUASHED

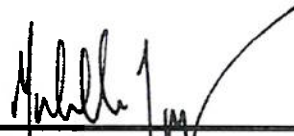
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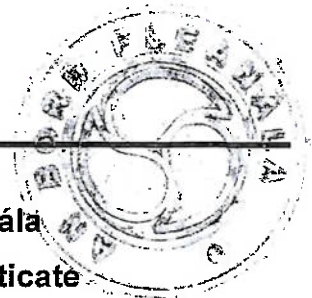
Dated 19/1/2022

Signed: Secretary *Brid Hill*
Chief Officer

34. In accordance with sections 9(4), 9(7) and 9(8) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended the developer shall pay to the planning authority a financial contribution in lieu of the provision of public open space within the site, will be applied towards the upgrade of Bremore Regional Park, in accordance with the Fingal County Council Development Contribution Scheme 2021-2025, made under Section 48 of the Planning and Development Act 2000. The amount of contribution shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index-Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the development should pay a financial contribution in lieu of the provision of public open space within the site where the site is considered by the planning authority and An Bord Pleanála to be too small or inappropriate to fulfil useful purpose in this regard.


Michelle Fagan
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 30th day of November 2021

19/1/2022

Baird Hall
Chief Officer

DECISION QUASHED